

Senate Bill No. 1316

CHAPTER 439

An act to amend Sections 10232.6, 11302, 11310, 11314, 11315, 11319, 11320, 11321, 11323, 11324, 11325, 11328, 11340, 11341, 11343, 11344, 11360, 11400, 11401, 11406, 11408, 11410, 11411, 11412, and 11422 of, and to repeal Sections 11311, 11312, 11342, 11402, 11403, and 11421 of, the Business and Professions Code, relating to real estate appraisers, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 11, 1996. Filed
with Secretary of State September 12, 1996.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1316, Russell. Real estate appraisers.

(1) Existing law, the Real Estate Appraisers' Licensing and Certification Law, regulates the licensing and certification of real estate appraisers and defines various terms related thereto, including "certificate," "certification," and "license."

This bill would delete the definitions of "certificate" and "certification" and would revise the definition of "license" to mean any license, certificate, permit, registration, or other means issued by the Office of Real Estate Appraisers authorizing the person to whom it is issued to act as a real estate appraiser. The bill would make various conforming changes to reflect this change in terminology.

(2) Existing law establishes the Office of Real Estate Appraisers and provides for the appointment by the Governor of a director of the office. Existing law authorizes the director to appoint a deputy director of regulatory licensing and a deputy director of administration.

This bill would delete the specific authorization for a deputy director of regulatory licensing and a deputy director of administration, and instead would authorize the director to appoint not more than 4 deputy directors as the director deems appropriate, as specified.

(3) Existing law establishes the Real Estate Appraisers' Advisory Committee to assist the director in the administration of the Real Estate Appraisers' Licensing and Certification Law.

This bill would abolish that committee and make related changes.

(4) Existing law authorizes the director to issue a citation that may contain an order to pay an administrative fine to a state licensed or state certified real estate appraiser who violates any provision of the Real Estate Appraisers' Licensing and Certification Law or regulations adopted to carry out its purposes.

This bill would authorize the director to issue a citation to any licensee, applicant, or person who acts in a capacity that requires a license, and who violates the Real Estate Appraisers' Licensing and Certification Law or regulations adopted to carry out its purposes. This bill would require the citation to contain specified information concerning the consequences of failing to respond to the citation.

(5) Existing law establishes various procedures for the licensure or certification of real estate appraisers.

This bill would require an applicant for licensure to submit 2 fingerprint cards for the purpose of a criminal record check, rather than one card. The bill would authorize issuance of a temporary license or certificate valid for up to 150 days, rather than 120 days.

(6) Existing law specifies fees to take an examination for a license or certification as a real estate appraiser.

This bill would delete specified examination fees and instead provide that the fees are not to exceed the cost to the Office of Real Estate Appraisers as determined by competitive bid. The bill would also revise and recast these provisions.

(7) Existing law establishes the Administration and Recovery Accounts in the Real Estate Appraisers Regulation Fund, and provides that after January 1, 1996, 5% of license or certificate fees are to be credited to the Recovery Account.

This bill would provide that on and after January 1, 2000, 5% of license or certificate fees are to be credited to the Recovery Account. The bill would also require interest to be paid on all money transferred from the Real Estate Appraisers Regulation Fund to the General Fund.

(8) This bill would declare that it is to take effect immediately as an urgency statute.

The people of the State of California do enact as follows:

SECTION 1. Section 10232.6 of the Business and Professions Code is amended to read:

10232.6. (a) A real estate broker, acting within the course and scope of his or her license, who arranges for or engages the services of an appraiser licensed or certified by the Office of Real Estate Appraisers for the applicable transaction, and delivers the resulting appraisal to the prospective lender and prospective purchaser as required by Section 10232.5, has met the broker's obligation of full and complete disclosure solely pursuant to paragraph (2) of subdivision (a) of Section 10232.5 and paragraph (2) of subdivision (b) of Section 10232.5, and is not required to provide a separate estimate of fair market value under Section 10232.5.

(b) This section shall not apply in instances where the licensed or certified appraiser is an employee of the broker. However, the duty of disclosure shall not be deemed met where the broker knew or



should have known that the referral was negligently made or that the fair market value provided by the appraiser was inaccurate.

(c) Nothing in this section is intended to relieve the broker of any obligation or requirement to disclose what he or she knows about the value of the property.

(d) This section shall apply only to loan transactions and shall have no effect on a real estate broker's duties of disclosure in purchase or sales transactions.

SEC. 2. Section 11302 of the Business and Professions Code is amended to read:

11302. For the purpose of applying this part, the following terms, unless otherwise expressly indicated, shall mean and have the following definitions:

(a) "Agency" means the Business, Transportation and Housing Agency.

(b) "Appraisal" means a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion in a federally related transaction as to the market value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information.

The term "appraisal" does not include an opinion given by a real estate licensee or engineer or land surveyor in the ordinary course of his or her business in connection with a function for which a license is required under Chapter 7 (commencing with Section 6700) or Chapter 15 (commencing with Section 8700) of Division 3, or Chapter 3 (commencing with Section 10130) or Chapter 7 (commencing with Section 10500) and the opinion shall not be referred to as an appraisal. This part does not apply to a probate referee acting pursuant to Sections 400 to 408, inclusive, of the Probate Code unless the appraised transaction is federally related.

(c) "Appraisal Foundation" means the Appraisal Foundation that was incorporated as an Illinois not-for-profit corporation on November 30, 1987.

(d) "Appraisal Subcommittee" means the Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

(e) "Director" means the Director of the Office of Real Estate Appraisers.

(f) "Federal financial institutions regulatory agency" means the Federal Reserve Board, Federal Deposit Insurance Corporation, Office of the Comptroller of the Currency, Office of Thrift Supervision, Federal Home Loan Bank System, National Credit Union Administration, the Resolution Trust Corporation, and any other agency determined by the director to have jurisdiction over transactions subject to this part.

(g) "Federally related real estate appraisal activity" means the act or process of making or performing an appraisal on real estate or real



property in a federally related transaction and preparing an appraisal as a result of that activity.

(h) “Federally related transaction” means any real estate-related financial transaction which a federal financial institutions regulatory agency engages in, contracts for or regulates and which requires the services of a state licensed real estate appraiser regulated by this part. This term also includes any transaction identified as such by a federal financial institutions regulatory agency.

(i) “License” means any license, certificate, permit, registration, or other means issued by the office authorizing the person to whom it is issued to act pursuant to this part within this state.

(j) “Licensure” means the procedures and requirements a person shall comply with in order to qualify for issuance of a license and includes the issuance of the license.

(k) “Office” means the Office of Real Estate Appraisers.

(l) “Secretary” means the Secretary of the Business, Transportation and Housing Agency.

(m) “State licensed real estate appraiser” is a person who is issued and holds a current valid license under this part.

(n) “Uniform Standards of Professional Appraisal Practice” are the standards of professional appraisal practice established by the Appraisal Foundation.

SEC. 3. Section 11310 of the Business and Professions Code is amended to read:

11310. The Governor shall appoint, subject to confirmation by the Senate, the Director of the Office of Real Estate Appraisers who shall, in consultation with the Governor and secretary, administer the licensing and certification program for real estate appraisers. In making the appointment, consideration shall be given to the qualifications of an individual that demonstrate knowledge of the real estate appraisal profession.

(a) The director shall serve at the pleasure of the Governor. The salary for the director shall be fixed and determined by the secretary with approval of the Department of Personnel Administration.

(b) The director shall not be actively engaged in the appraisal business or any other affected industry for the term of appointment, and thereafter the director shall be subject to Section 87406 of the Government Code.

(c) The director, in consultation with the secretary and in accordance with the State Civil Service Act, may appoint and fix the compensation of legal, clerical, technical, investigation, and auditing personnel as may be necessary to carry out this part. All personnel shall perform their respective duties under the supervision and direction of the director.

(d) The director may appoint not more than four deputy directors as he or she deems appropriate. The deputy directors shall perform

their respective duties under the supervision and direction of the director.

(e) Every power granted to or duty imposed upon the director under this part may be exercised or performed in the name of the director by the deputy directors, subject to conditions and limitations as the director may prescribe.

SEC. 4. Section 11311 of the Business and Professions Code is repealed.

SEC. 5. Section 11312 of the Business and Professions Code is repealed.

SEC. 6. Section 11314 of the Business and Professions Code is amended to read:

11314. The office is required to include in its regulations requirements for licensure and discipline of real estate appraisers that ensure protection of the public interest and comply in all respects with Public Law 101-73 and any subsequent amendments thereto. Requirements for each level of licensure shall, at a minimum, meet the criteria established by the Appraiser Qualification Board of the Appraisal Foundation or the Appraisal Subcommittee.

SEC. 7. Section 11315 of the Business and Professions Code is amended to read:

11315. (a) The director may issue to a licensee, applicant, or person who acts in a capacity that requires a license under this part a citation that may contain an order to pay an administrative fine assessed by the office if the appraiser is in violation of this part or any regulations adopted to carry out its purposes.

(b) A citation shall be written and describe with particularity the nature of the violation, including a specific reference to the provision of law determined to have been violated.

(c) If appropriate, the citation shall contain an order of abatement fixing a reasonable time for abatement of the violation.

(d) In no event shall the administrative fine assessed by the office exceed ten thousand dollars (\$10,000) per violation. In assessing a fine, the office shall give due consideration to the appropriateness of the amount of the fine with respect to factors such as the gravity of the violation, the good faith of the person who committed the violation, and the history of previous violations.

(e) A citation or fine assessment issued pursuant to a citation shall inform the person cited that, if he or she desires a hearing to contest the finding of a violation, he or she must request a hearing by written notice to the office within 30 days of the date of issuance of the citation or assessment. Hearings shall be held pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The citation shall also inform the person cited that failure to respond to the citation shall result in any order of abatement or administrative fine imposed becoming final, and that any order of abatement or administrative fine shall constitute an

enforceable civil judgment in addition to any other penalty or remedy available pursuant to law.

(f) (1) Failure of a licensee to pay a fine within 30 days of the date of assessment, unless the citation is being appealed, shall result in disciplinary action by the office. If a licensee fails to pay a fine within 30 days, the director shall charge him or her interest and a penalty of 10 percent of the fine amount. Interest shall be charged at the pooled money investment rate.

(2) If a citation is not contested and a fine is not paid, the full amount of the assessed fine shall be added to any fee for renewal of a license. A license shall not be renewed prior to payment of the renewal fee and fine.

(3) Any fine not paid within 30 days of a final order shall constitute a valid and enforceable civil judgment.

(g) A citation may be issued without the assessment of an administrative fine.

(h) Any administrative fine or penalty imposed pursuant to this section shall be in addition to any other criminal or civil penalty provided for by law.

(i) Administrative fines collected pursuant to this section shall be deposited in the Real Estate Appraisers Regulation Fund.

SEC. 8. Section 11319 of the Business and Professions Code is amended to read:

11319. Notwithstanding any other provision of this code, the Uniform Standards of Professional Appraisal Practice constitute the minimum standard of conduct and performance for a licensee in any work or service performed that is addressed by those standards. If a licensee also is certified by the Board of Equalization, he or she shall follow the standards established by the Board of Equalization when fulfilling his or her responsibilities for assessment purposes.

SEC. 9. Section 11320 of the Business and Professions Code is amended to read:

11320. No person shall engage in federally related real estate appraisal activity governed by this part or assume or use the title of or any title designation or abbreviation as a licensed appraiser in this state without first obtaining a license as defined in Section 11302. Any person who willfully violates this provision is guilty of a public offense punishable by imprisonment in the state prison, or in a county jail for not more than one year, or by a fine not exceeding ten thousand dollars (\$10,000), or by both the imprisonment and fine. The possession of a license issued pursuant to this part does not preempt the application of other statutes including the requirement for specialized training or licensure pursuant to Article 3 (commencing with Section 750) of Chapter 2.5 of Division 1 of the Public Resources Code.

SEC. 10. Section 11321 of the Business and Professions Code is amended to read:



11321. (a) No person other than a state licensed real estate appraiser may assume or use that title or any title, designation, or abbreviation likely to create the impression of state licensure as a real estate appraiser in this state.

(b) No person other than a licensee may sign an appraisal. A trainee licensed pursuant to Section 11327 may sign an appraisal if it is also signed by a licensee.

(c) No person other than a licensee holding a current valid license at the residential level issued under this part to perform, make, or approve and sign an appraisal may use the abbreviation SLREA in his or her real property appraisal business.

(d) No person other than a licensee holding a current valid license at a certified level issued under this part to perform, make, or approve and sign an appraisal may use the term “state certified real estate appraiser” or the abbreviation SCREA in his or her real property appraisal business.

SEC. 11. Section 11323 of the Business and Professions Code is amended to read:

11323. No licensee shall engage in any appraisal activity in connection with the purchase, sale, or transfer of real property if his or her compensation is affected by the sales commission generated by the transaction for which the appraisal was made.

SEC. 12. Section 11324 of the Business and Professions Code is amended to read:

11324. An individual who is not a licensee may assist in the preparation of an appraisal under the following conditions:

(a) The assistance is under the direct supervision of an individual who is a licensed appraiser and the final conclusion as to value is made by a licensed appraiser.

(b) The final appraisal document is approved and signed, with acceptance of full responsibility, by the supervising individual who is licensed by the state pursuant to this part, identifies the assisting individual, and identifies the scope of work performed by the individual who assisted in preparation of the appraisal.

SEC. 13. Section 11325 of the Business and Professions Code is amended to read:

11325. (a) The director shall adopt regulations which determine the parameters of appraisal work which may be performed by licensed appraisers.

(b) Regulations adopted by the director pursuant to this section shall, at a minimum, meet the standards established by federal financial institution regulatory agencies as required by Section 1112 of Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, Public Law 101-73.

SEC. 14. Section 11328 of the Business and Professions Code is amended to read:

11328. To substantiate documentation of appraisal experience, or to facilitate the investigation of illegal or unethical activities by a licensee, applicant, or other person acting in a capacity that requires a license, that licensee, applicant, or person shall, upon the request of the director, submit copies of appraisals, or any work product which is addressed by the Uniform Standards of Professional Appraisal Practice, and all supporting documentation and data to the office. This material shall be confidential in accordance with the confidentiality provisions of the Uniform Standards of Professional Appraisal Practice.

SEC. 15. Section 11340 of the Business and Professions Code is amended to read:

11340. The director shall adopt regulations governing the process and the procedure of applying for a license which shall include, but not be limited to, necessary experience or education, equivalency, and minimum requirements of the Appraisal Foundation, if any.

(a) For purposes of the educational background requirements established under this section, the director shall grant credits for any courses taken on real estate appraisal ethics or practices pursuant to Section 10153.2, or which are deemed by the director to meet standards established pursuant to this part and federal law.

(b) For the purpose of implementing and applying this section, the director shall prescribe by regulation “equivalent courses” and “equivalent experience.” The experience of employees of an assessor’s office or of the State Board of Equalization in setting forth opinions of value of real property for tax purposes shall be deemed equivalent to experience in federally related real estate appraisal activity. Notwithstanding any other law, a holder of a valid real estate broker license shall be deemed to have completed appraisal license application experience requirements upon proof that he or she has accumulated 1,000 hours of experience in the valuation of real property.

(c) The director shall adopt regulations for licensure which shall meet, at a minimum, the requirements and standards established by the Appraisal Foundation, the Resolution Trust Corporation, and the federal financial institutions regulatory agencies acting pursuant to Section 1112 of the Financial Institutions Reform Recovery and Enforcement Act of 1989, Public Law 101-73 (FIRREA). The director shall, by regulation, require the application for a real estate appraiser license to include the applicant’s social security number.

(d) In evaluating the experience of any applicant for a license, regardless of the number of hours required of that applicant, the director shall apply the same standards to the experience of all applicants.

(e) No license shall be issued to an applicant who is less than 18 years of age.

SEC. 16. Section 11341 of the Business and Professions Code is amended to read:

11341. A license shall be valid for four years from the date of its issuance unless otherwise extended or limited by the director.

SEC. 17. Section 11342 of the Business and Professions Code is repealed.

SEC. 18. Section 11343 of the Business and Professions Code is amended to read:

11343. (a) Each applicant for a license shall submit two completed fingerprint cards.

(b) The fingerprint cards shall be used for the purpose of a criminal records check of applicants and licensees through state and federal law enforcement authorities.

(c) Results of any records check by federal law enforcement authorities shall not be released except in accordance with federal requirements.

SEC. 19. Section 11344 of the Business and Professions Code is amended to read:

11344. (a) Notwithstanding Section 11341, a temporary license may be issued pending the outcome of the fingerprint and background check or as otherwise prescribed by the director. A temporary license is valid for up to 150 days. Unless otherwise prohibited pursuant to Section 11350.6 of the Welfare and Institutions Code, a temporary license may be renewed once at the discretion of the director.

(b) The director may issue a probationary license as follows:

(1) By term.

(2) By conditions to be observed in the exercise of the privileges granted.

SEC. 20. Section 11360 of the Business and Professions Code is amended to read:

11360. The director shall adopt regulations governing the process and procedures for renewal of a license which shall include, but not be limited to, continuing education requirements.

SEC. 21. Section 11400 of the Business and Professions Code is amended to read:

11400. (a) Initial application fees shall be paid to the office at the time of application.

(b) All issuance-related fees shall be paid to the office at the time the issuance application is submitted to the office.

(c) All fees shall be paid by cashier's check, certified check, money order, or government purchase order. In addition, the office may accept personal checks or credit cards for the payment of fees. All fees shall be deemed earned by the office upon receipt and are refundable at the discretion of the director.

SEC. 22. Section 11401 of the Business and Professions Code is amended to read:

11401. (a) The fee to take an examination or reexamination for a license shall be set at an amount not to exceed the cost to the office as determined by competitive bid.

(b) The director may provide that the applicant pay the fee directly to the examination provider.

SEC. 23. Section 11402 of the Business and Professions Code is repealed.

SEC. 24. Section 11403 of the Business and Professions Code is repealed.

SEC. 25. Section 11406 of the Business and Professions Code is amended to read:

11406. (a) The director shall by regulation establish fees for approval of basic education and continuing education courses or their equivalent, or for the evaluation of petitions of applicants based upon claims of equivalency pursuant to Section 11340. The fees established by regulation shall be sufficient to cover the costs incurred by the office in processing applications for course approvals and petitions for equivalency.

(b) The director shall by regulation establish fees for approval of courses of study required to be taken by applicants for licenses. The fees established by regulation shall be sufficient to cover the costs incurred by the office in processing applications for course approvals and petitions for equivalency.

SEC. 26. Section 11408 of the Business and Professions Code is amended to read:

11408. (a) Application for issuance of a license must be submitted to the office within one year of the successful completion of the examination.

(b) Every applicant or licensee shall pay federal registry fees and state registry processing fees to the state as required as part of issuance-related fees.

SEC. 27. Section 11410 of the Business and Professions Code is amended to read:

11410. The Real Estate Appraisers Regulation Fund is hereby created in the State Treasury to consist of moneys raised by fees and assessments imposed pursuant to this part. Interest shall be paid on all money transferred to the General Fund from the Real Estate Appraisers Regulation Fund, notwithstanding the provisions of Section 16310 of the Government Code.

SEC. 28. Section 11411 of the Business and Professions Code is amended to read:

11411. There shall be separate accounts in the Real Estate Appraisers Regulation Fund for purposes of administration and for purposes of recovery. These accounts shall be known respectively as the Administration Account and the Recovery Account. On and after January 1, 2000, five percent of the amount of any license or certificate fee collected under this part shall be credited to the



Recovery Account. The Recovery Account is a continuing appropriation for carrying out this chapter.

SEC. 29. Section 11412 of the Business and Professions Code is amended to read:

11412. (a) On or before January 1, 2000, the director shall determine the number of complaint cases containing judicial findings of fraud that may be eligible for recovery pursuant to future regulations that are closely analogous to those which have been adopted for the Real Estate Recovery Fund established in Chapter 6.5 (commencing with Section 10470) of Part 1. This information shall be used by the director to determine whether a real estate appraiser Recovery Account is necessary or whether to recommend that it should be eliminated.

(b) On or before January 1, 2001, regulations shall be adopted for administration of the Recovery Account, which shall include claims, funding, and administrative procedures closely analogous to those which have been adopted for the Real Estate Recovery Fund established in Chapter 6.5 (commencing with Section 10470) of Part 1.

(c) The statute of limitations for claims against the fund arising between the effective date of this part and the creation of the fund shall be tolled until the date the fund is created.

SEC. 30. Section 11421 of the Business and Professions Code is repealed.

SEC. 31. Section 11422 of the Business and Professions Code is amended to read:

11422. The office shall, on or before February 1, 1994, and at least annually thereafter, transmit to the appraisal subcommittee specified in subdivision (d) of Section 11302 a roster of persons licensed pursuant to this part.

SEC. 32. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

To ensure the orderly renewal of licenses held by real estate appraisers and the appropriate and efficient use of revenues derived from the renewal process, it is necessary that this act take effect immediately.

